



# ACCENT ON COURTS

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## JUDICIAL REFORM IN KENTUCKY

### Dedication, Desire for Excellence Led to 1975 Passage of Judicial Article

by  
Nancy Lancaster

The sum and substance of the importance of this ten year anniversary of the passage of the judicial article are epitomized in the results ... one Court of Justice. For many who work daily in the system, or become involved as parties in the proceedings, it is probably difficult today to visualize the court structure of Kentucky as it was a decade ago. Under the 1891 Constitution, the circuit courts were given constitutional status, as were a variety of lower courts, including police courts, county courts, quarterly courts, and justice of the peace courts. Those inferior courts had overlapping jurisdiction, and consisted of nearly 1,000 part-time courts by 1975. There was no intermediate appellate court, and the former Court of Appeals (now the Supreme Court) was overburdened with cases. Given the traditional reluctance of the voters of the Commonwealth to approve constitutional amendments unless some direct benefit accrues to them personally, it was an arduous task to secure the support and confidence necessary to obtain a majority vote at the polls.

"Judicial reform is not a sport for the short-winded." With the Kentucky experience, Arthur T. Vanderbilt's famous words proved to be prophetic. November 4, 1975, was not a date to be reckoned as the beginning or the end of this judicial system ... it was in the middle. And this is not an anniversary that came about because millions of dollars were spent on a public campaign. It was hard, grueling work performed by hundreds of people who cared enough to assist in the education of the citizens of Kentucky about the need for judicial reform. It took ten years to accomplish that goal.

#### Early Attempts At Revision

The final, successful effort to revise the 1891 judicial article actually began in 1964 with the creation of the Constitutional Revision Assembly. The article embodied in the constitutional proposal closely resembled the judicial article which eventually passed in 1975. Although the entire revision proposal became an issue in the hustings, the judicial article provoked the most criticism and political abuse because it would have

stripped control of county power bases from the county judges, justices of the peace and police judges. The proposal was soundly defeated at the

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### Unified Court of Justice Celebrates Decade of Progress

by Pam Vest

The November 1975 passage of the judicial article establishing a unified court system in Kentucky was the culmination of years of devoted hard work by people who believed in judicial reform. But, while the passage of the article marked the successful conclusion of a ten year movement toward court unification, 1975 was also the beginning of innovation in judicial administration. This Tenth Anniversary allows us to reflect on a few of the accomplishments of the past decade:

1976 - Kentucky Pretrial Services Agency was established to assist the state's trial courts

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polls by a four-to-one margin in 1966.

In 1968, following the rejection of the Constitutional Revision Assembly proposal by the voters, the Kentucky Bar Association took the lead and moved forward in their efforts to cure the ills of the system. In conjunction with the American Judicature Society, the bar association sponsored a statewide Citizens Conference on Kentucky State Courts. Encouraged by the response to the conference and the dissemination of the resulting consensus statement, the KBA had a draft judicial article prepared for submission to the 1972 General Assembly. There was an apparent division of opinion between the bench and the bar concerning the provisions relating to the lower courts, which many felt would lessen the chances to pass an amendment that would insure an intermediate appellate court. Lacking an agreement between the legislators, the bench and the bar, the bill died in committee.

### The Ad Hoc Drafting Committee

Despite the failures, the momentum for judicial reform was growing and was recognized by the formation of several committees charged with the task of drafting a new judicial article. The Governor's Judicial Advisory Commission was established by executive order; other active drafting committees were the Steering Committee of the Kentucky Court of Appeals, the Judicial Article Committee of the Kentucky Bar Association, the Courts Committee of the Kentucky Crime Commission, and the Interim Committee on Elections and Constitutional Amendments of the Kentucky General Assembly. Realizing

the difficulty of coordinating the efforts of so many large committees, the chairmen of each group formed themselves into an Ad Hoc Drafting Committee, and reported back to their various full committees with progress reports. The ad hoc committee also enlisted the support and advice of the most knowledgeable legal minds in the Commonwealth to refine the draft. The work of the committee continued through many revisions until it was ready for submission to the General Assembly for their approval to be placed on the ballot as a referendum.

### Kentucky Citizens For Judicial Improvement, Inc.

In the summer of 1973, it became apparent that a permanent, professional staff was necessary to provide assistance to the many committees involved, and to guide the proposal through the session of the General Assembly to be convened in January, 1974. Kentucky Citizens for Judicial Improvement, Inc., a non-profit

organization, was formed for this purpose and funding was secured through the Kentucky Crime Commission from the Law Enforcement Assistance Administration. An initial award of \$118,511 was made in 1973, and an additional \$15,000 was added in 1974. By January 1, 1975, another \$150,000 was awarded, bringing the total to \$283,511.

The primary goal of the project established by the initial grant award was to research, compile and disseminate information regarding the operation and needs of the Kentucky judicial system as it existed, and to make recommendations for changes in the judicial process to effect an improvement through administrative, statutory and constitutional revision. With funds available, it was possible for the drafting committee to obtain an accurate picture of the thoughts of the people about the needs of the court system.

A Public Conference on the Proposed Kentucky Judicial

## Supreme Court Goes on the Road, Holds Session in Louisville

The state's highest court traditionally sits in the State Capitol Building in Frankfort, however, on November 15, the seven member panel travelled to Louisville's renovated Old Jail Building courtroom for a one-day session to increase public awareness and understanding of the Court's function.

"While people may read or hear about the Court's decisions, which ultimately affect all our daily lives, few

attorneys, and even fewer members of the general public, come to Frankfort to actually see the Supreme Court in session," stated Chief Justice Robert F. Stephens. "This was a convenient opportunity to see and perhaps better understand how the Court works." Three oral arguments were scheduled, all argued by Louisville attorneys.

The Court is tentatively planning sessions in Somerset, Covington, and Owensboro during 1986.

Article was held in September, 1973, at which about 100 participants met with a panel of five experts who had been successful in judicial reform in their respective states. The discussions centered on the substance of the proposed judicial article, and strategies for achieving executive, legislative, judicial, public and organizational support for the proposal. The draft was discussed, criticized and evaluated section by section by the participants. Comments by the out-of-state experts paved the way for Kentucky to devise a judicial article that would conform realistically to the wishes of its citizens and yet provide a more effective and efficient system of justice.

Three months later a Kentucky Citizens' Conference for Judicial Improvement was held, co-sponsored by the Kentucky Citizens for Judicial Improvement, the American Judicature Society, the Kentucky Bar Association, the Kentucky Circuit Judges' Association, the Kentucky Judicial Conference, and the Kentucky League of Women Voters.

One hundred and forty judges, lawyers, and lay

citizens were invited to attend. The program included both in-state and out-of-state faculty who provided the participants with an in-depth study of the existing Kentucky court system and conducted seminars on court organization, judicial personnel, court administration, and citizen involvement. After three days of intensive study of the proposed judicial article, the Conference issued a consensus statement which declared that it was a public responsibility "to take steps necessary for the establishment of a permanent organization which would examine the recommendations of the Conference and adopt a plan of procedure for action and fulfillment." With this mandate, an Ad Hoc Committee of the Citizens' Conference was formed and became members of the Board of Directors of Kentucky Citizens for Judicial Improvement, Inc.

#### A Public Opinion Survey

The most valuable decision made by the proponents of a new judicial article was to have a public opinion poll conducted under the auspices of the grant. Kentucky Citizens for Judicial Improvement

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## McDaniel Sworn In as Daviess Circuit Judge

James McDaniel took office as Daviess County circuit judge as soon as his election was certified.

Judge McDaniel won the office by defeating incumbent Judge Calvin Ray Robinson, who was appointed by Governor Martha Layne Collins in June to fill the unexpired term of retiring Judge Henry M. Griffin until the election. Judge Griffin had left the bench with six and one-half years left in his term, and Section 152 of the Kentucky Constitution states that such appointees shall serve only until a special election can be held.

Judge McDaniel is an Owensboro native. He attended Western Kentucky University and received his law degree from the University of Louisville School of Law in 1949. Since that time he has been in general practice, served as prosecutor for the local police court and has been a Commonwealth's attorney.

The newly elected judge will represent the first division of the 6th Judicial Circuit.



**ACCENT ON COURTS**  
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**PAM VEST**  
Editor

**CHARLES WEHRLEY, Jr.**  
Managing Editor

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## Calme Replaces Grimm as Campbell Circuit Clerk

Thomas Calme was elected circuit clerk of Campbell County in the November 5th election. He replaces Clerk Jean Grimm, who chose not to seek election. Mrs. Grimm was appointed to the position following the death of incumbent clerk Edward Blau.

Mr. Calme is a native of Dayton, Kentucky. He received his bachelor's degree from Thomas More College and his master's degree from Xavier University.

Before his election to circuit clerk, Mr. Calme had been director of the Campbell County Juvenile Department for 11 years. Prior to that he had been a counselor at Newport Junior High School.

# DEDICATION

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entered into an agreement with John F. Kraft, Inc. to conduct a survey of "Adult Attitudes in Kentucky toward Kentucky's Court System and Judicial Reform." The survey, completed in December, 1973, was comprehensive in every respect, with samples taken statewide by age of respondent, economic level, circuit court and appellate court district, and area of residence, e.g., urban, rural and the like.

The survey revealed that 73 percent of Kentucky residents preferred law-trained judges. In contrast, the survey also indicated that 65 percent of Kentuckians wanted to continue to elect their judges, rather than have them appointed under a merit selection plan. They were in favor of a more equitable and efficient system, but were reluctant to relinquish control of local trial courts.

With these opinions at hand, the drafting committee made drastic changes in the proposed draft which would make it more acceptable to the General Assembly, and eventually to the general public.

The final draft included provisions for a four-tiered court structure, with the Chief Justice as its executive and administrative head; a Supreme Court, a Court of Appeals, the circuit courts, and the district courts. The merit selection of judges, which was included in earlier drafts, was removed and replaced with non-partisan elections, except in cases of a vacancy where appointment was made by the Governor from a list of three submitted by a

Judicial Nominating Committee. Another major change in the original draft was made for demographic reasons. Because it became apparent that judges trained in the law would not be available in each of Kentucky's 120 counties, provisions were made for the appointment of trial commissioners in counties where no district judge resided. It was additionally provided that trial commissioners must be an attorney if one were qualified and available. The remainder of the proposed judicial article was virtually unchanged; the creation of a Judicial Retirement and Re-

## **"Judicial reform is not a sport for the short-winded."**

**Arthur T. Vanderbilt**

moval Commission, the guarantee of at least one appeal as a matter of right (a provision which was not guaranteed by the 1891 Constitution), state funding of the unified Court of Justice, and the right of the Supreme Court to prescribe rules of practice and procedure.

### **Submission to the General Assembly**

The proposal, after having been disseminated to various committees, the bar association, and interested citizens, was drafted into bill form and submitted to the General Assembly in February, 1974. It was introduced in the Senate and was reported favorably by the Elections and Constitutional Amendments Committee. The bill passed the Senate on March 7, 1974 by a vote of 24-13. The Senate vote was considered to have been very

close since Section 256 of the Kentucky Constitution requires that three-fifths of the elected members of each house must vote favorably for passage.

Stung by the narrow margin in the Senate, the proponents concentrated heavily on securing support in the oftentimes more independent House of Representatives. The bill was referred to the House Elections and Constitutional Amendments Committee where a battle was raging to rescind the Equal Rights Amendment, which had been ratified during the previous session. Because advocates of rescission of the ERA could not garner enough votes to get their bill out of committee, the chairman called for reconsideration of the courts bill and the motion passed. The judicial amendment bill was temporarily pigeonholed until the next scheduled committee meeting when several members of the committee who were supporters of the judicial article agreed to report the ERA measure out of committee in return for a favorable report on the judicial amendment. On March 15, 1974, the bill passed the House of Representatives by 79-4, a vote well above the three-fifths majority needed to place the measure before the people for ratification.

### **Education Of The Public**

For the ensuing year and a half, the objective was to recruit an army of volunteers to assist in the education of the public about the flaws in the existing court system and of the need for reform ... to underline, by comparison, the differences between the old and the newly proposed. For many dedicated individuals, the hard work had just begun.

One of the major projects undertaken by Kentucky Citizens for Judicial Improvement was the establishment of a Speakers' Bureau consisting of over 200 participants, primarily judges and members of the Kentucky Bar Association. Speaking engagements were actively solicited from every civic and service organization in the state. Speakers were provided with information kits which included hand-out materials and sample speeches for use with any type of audience. Although attempts were made to secure speakers who were not lawyers, most laymen did not feel adequately prepared to field the legal question with which they might be confronted concerning the provisions of the judicial article. Consequently, the burden of maintaining the Speakers' Bureau fell on the shoulders of the members of the bar.

The importance of the involvement of the Kentucky Bar Association cannot be overemphasized. Although most of the public educational efforts were coordinated through the Kentucky Citizens for Judicial Improvement, the bar association assisted in the development of regional seminars, one in each of the seven congressional districts. Additionally, bar association representatives were chosen to serve as Judicial Article Chairman and Co-Chairman in each county of the Commonwealth, setting up a statewide network of attorneys to serve in a local liaison capacity. The Young Lawyers Section of the KBA distributed copies of the proposed judicial article to 1600 young lawyers in Kentucky, and by means of their newsletter asked the membership to participate in the movement for judicial reform.

Organizational support was an important factor in reaching the public at large. Liaison with civic and service groups was maintained through personal visits, telephone calls and attendance at local and statewide meetings. Through these ongoing contacts, 22 organizations publicly endorsed the judicial article by resolution, and approximately 30 others accepted the offer of

judicial amendment was the press. Numerous articles were written discussing the problems of the old system and comparing them to the proposed system. Editorial support was widespread, and statewide media coverage was given to the educational campaign. The press, more clearly than any other institution, had seen the need for substantial improvement.



Kentucky Citizens for Judicial Improvement to provide speakers at their state conventions.

A major focus of the educational effort was on the schools, at both the secondary and undergraduate levels, as well as the graduate level in law. Lesson plans and program materials designed to help the individual teacher prepare a comprehensive lecture on the subject of judicial reform were developed for all levels. Some type of exposure to the judicial article was achieved on every campus throughout the Commonwealth.

One of the most effective aids in the passage of the

As election day drew nearer, it was decided to contract once again with the John F. Kraft Company to conduct a follow-up survey to determine the major issues that might have developed during the two years of activity engendered by the Kentucky Citizens for Judicial Improvement. The poll, somewhat less comprehensive than the one taken in 1973 and concentrated in the urban areas, indicated that the electorate had not changed their feelings about modernizing the courts, and predicted that "the judicial article is a winner."

With a positive response to the survey and high hopes for the future of the judicial system, a new committee was formed for the sole purpose of raising money to buy advertising, an activity prohibited under the federal grant awarded to Kentucky Citizens for Judicial Improvement. This organization, Kentuckians for Court Modernization, was composed of prominent attorneys and lay persons whose responsibility was to solicit money for the placement of advertisements urging a "YES" vote in newspapers and on radio and television. The media blitz began during the last two weeks before the election and was concentrated in the urban areas of the state.

## Ratification

November 4, 1975 ... for the advocates of judicial revision, it was a day to remember.

The total vote cast on the constitutional amendment was 395,543 with 215,419 for passage and 180,124 against. Despite the newspaper headlines declaring the majority a "narrow margin," the favorable votes represented 54.46 percent of the total vote on the question, landslide proportions in any election.

The judicial amendment carried three and lost four of Kentucky's seven congressional districts. The four districts in which the judicial article was defeated were the first, second, fifth, and seventh, all rural districts in the far eastern and far western sections of the state. In contrast, the amendment carried the third, fourth, and sixth congressional districts, which contain the state's largest metropolitan areas. Only 35 of Kentucky's 120 counties approved the amendment. In many rural counties, however, the tally was as close as 20 to 30 votes difference, a factor that had a definite bearing on the final outcome. If the amendment had been soundly defeated in the rural areas, as many expected, the margin of majority in the urban areas would not have been sufficient to effect passage.

An analysis of the success of the judicial amendment does not produce any clearcut answers as to why the referendum was approved by the voters. Local officials across the state, who were for the most part opposed to the change, were stunned and claimed that the judicial amendment would not have passed without the urban vote.

Others declared that it was a fluke, because the people did not know what they were voting on. Some claim that the final burst of media advertising before the election substantially affected the outcome. An examination of the statewide survey conducted in September, 1975, however, reveals that the judicial article had already been declared a winner.

The most realistic assessment of the success appears to be that education of the public to the need for judicial improvement, one-on-one contact with people, involvement of community leaders and civic organizations, and most of all, the existing chaotic situation in the court system, were decisive factors in achieving change.

This recitation of facts and figures, the chronological list of activities reported here, cannot convey the excitement that built up as proponents of a new judicial system for Kentucky realized that they were going to accomplish their goal. They knew, moreover, that it was not the end of a dream ... it was the beginning of another decade of planning and implementation. But the framework was established and it was one of the most modern, efficient ones in the nation. The most promising ingredient inherent in the 1975 judicial article was its flexibility, giving the dreamers of today the ability to continue to improve the courts and give the citizens of this Commonwealth equitable and speedy justice.

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## UNIFIED COURT

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in reaching knowledgeable decisions relating to the release from custody of

persons awaiting trial. Kentucky remains the only state to statutorily abolish the practice of bail bonding for profit.

1976 - The State Law Library began equipping 15 law library collections for newly created Court of Appeals judges in their respective districts and in Frankfort. The Law Library later furnished copies of statutes, annotations, court rules and administrative regulations to circuit and district court judges.

1977 - Records management/uniform forms development established retention and disposal schedules for court records and implemented standardized forms for use by the entire Court of Justice.

1977 - Electronic audio recording equipment was installed in district courts to record proceedings. Court reporters for circuit court recording became members of the judicial personnel system.

1977 - Uniform accounting procedures were implemented, resulting in the Circuit Court Clerk Accounting Manual for use in uniformly accounting for the financial transactions for district and circuit court operation.

1977 - The Court of Justice entered the computer age with data processing capabilities which initially provided assistance to accounting in posting all financial accounts, providing information concerning availability of funds on budget overruns for the fiscal year. Early Data Processing also supplied an index of all cases involving the death

penalty, as well as systems for court equipment inventory control, bail bond receipt reporting, and for statewide personnel reporting.

1977 - A regional administration program was implemented to equalize work among judges within regions, to expedite disposition of litigation throughout the state, to promote uniform practices and procedures, and to increase responsiveness of the AOC to needs of the trial courts.

1977 - The State Law Library sold \$30 thousand worth of surplus law books to help finance the building of a complete collection of states' statutes and to increase the periodicals collection.

1977 - Uniform statistical reporting provided for collection, computerization and consolidation of all court caseload data.

Mark Your Calendar!

## Kentucky Bar Association Annual Convention

June 11-14, 1986

Drawbridge Inn Covington-Fort Mitchell

1978 - The Court of Justice was in full operation with the establishment of 114 district judgeships and the incorporation of over 600 deputy court clerks into the Court of Justice.

1978 - A system for compensating local governmental units for use of their properties by the Court of Justice was implemented. The system used an "actual costs" incurred formula which incorporated "use

allowance" and "operating costs allowance."

1978 - A Criminal Rules Revision committee was established to review the entire body of Rules of Criminal Procedure for possible changes to better conform to a unified court system.

1978 - Public Information functions were expanded beyond a bi-monthly newsletter publication to the issuance of press releases regarding activities of the courts. Court officials were encouraged to develop and maintain a continuing dialogue with local and state media and community organizations.

1978 - The State Law Library acquired access to Lexis computer-assisted legal research. A staff attorney was added to the Library personnel complement.

1978 - Financing of the unified Court of Justice became the responsibility of the state with all revenues collected by the courts deposited into the State Treasury.

1979 - A central operations center and print shop were established for the purpose of expediting shipments of standardized forms, furni-

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ture, equipment, and office supplies throughout the state.

1979 - Pretrial Services implemented mediation and diversion programs.

1979 - A Judicial Ethics Committee was created to render advisory opinions to judges and trial commissioners concerning the propriety of any act or conduct and the construction or application of any canon or the Code of Judicial Conduct.

1980 - The Economic Litigation Project was implemented in Campbell County to reduce court costs and delay of civil litigation by reducing the total time from filing to disposition.

1981 - By Supreme Court rule, news media television and still cameras were permitted in Kentucky's courtrooms.

1981 - Extensive overhaul of the Rules of Criminal Procedure culminated in 112 amendments to better conform to the organization of a unified Court of Justice.

1982 - Weighted caseload procedures were applied to circuit court statistics to help determine the work demands and pressures on court personnel across the state.

1982 - Videotape recordation was implemented in Circuit Judge James S. Chenault's Madison County courtroom. The technology would later improve and advance to courtrooms in Louisville and Lexington by 1985.

1983 - While voluntary attendance at judicial education programs increased steadily since the first judicial college under the auspices of the AOC was held in December 1977, continuing judicial education became mandatory by Supreme Court Rule in 1983.

1984 - Annual Statewide High School Mock Trial Tournament was initiated.

1985 - During this year, national conferences and associations chose Kentucky for their annual meeting sites. The Court of Justice hosted the Conference of

Chief Justices and the Conference of State Court Administrators, the National Conference of Appellate Court clerks, and the 13th Annual Conference of Pretrial Services.

These achievements of the past decade indicate that the reformation spirit and vision of those early judicial planners continues. There have been many other projects and programs, revisions and improvements, additions and refinements not mentioned here. All are ongoing and require constant attention to their improvement and renovation to better serve the public. In the final analysis, however, the broad scope of such administrative innovations would not likely be possible under any organizational structure other than a unified system. Thus, we can appreciate the importance of the judicial article's passage.

While court personnel can be proud of this past decade of improvement, we must now turn tirelessly toward another decade of progressive judicial administration.



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